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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ELISHA SHEPHERD,

Plaintiff,

v.

MILTON J. JAKEWAY, and
UNITED STATES OF AMERICA,

Defendants.

Case No. 3:01-cv-333 JKS

MEMORANDUM IN SUPPORT OF MOTION FOR AWARD OF ATTORNEY FEES

COMES NOW Elisha Shepherd, through her attorneys, and moves for an award of Attorney Fees. The Plaintiff is entitled to an award of attorney's fees at the conclusion of the trial in the captioned case pursuant to the Equal Access to Justice Act ("EAJA") at 28 U.S.C. § 2412.

The Equal Access to Justice Act, 28 U.S.C. § 2412 was enacted by Congress "to encourage lawyers to undertake litigation to vindicate the constitutional and statutory rights of those who could not otherwise afford to vindicate those rights." Taucher v. Rainer, 237 F.Supp. 2d 7, 15 (D.D.C. 2002). In the present case, the Plaintiff's attorneys agreed to represent her, in part, on the basis that Congress had enacted

the Equal Access to Justice Act to encourage them to vindicate the constitutional rights of Elisha Shepherd when she could not otherwise afford to vindicate those rights.

The Plaintiff is entitled to an award of attorney's fees pursuant to the EAJA. The Plaintiff incorporates by reference her arguments in her brief in opposition to the Defendants' rule of law motion at Docket Nos. 173 and 174. In its order on the foregoing motion, the Court left open the issue of attorney's fees pursuant to 28 U.S.C. § 2412. (Docket No. 178, Footnote 2.)

The Plaintiff seeks an award of attorney's fees based in part on the Defendants' conduct, including their bad faith conduct, of their defense in the captioned case. The Defendants' conduct upon which the present motion is based includes the following:

- (a) Defendants' attempt to withdraw admission on eve of trial regarding the video tape the Defendant watched;

- (b) Defendants' attempt to file an errata to stipulation between the parties which changed the substance of the stipulation;

- (c) Defendants' reassertion of the defense of qualified immunity defense after Court ruled was not available;

- (d) Defendants' change in their position after stipulating to issues in the stipulated proposed pretrial order;

- (e) During trial the Defendants moved, without any legal basis whatsoever, to have notes of Defendants' expert David Sperbeck admitted at trial as a business record exception to the hearsay rule, thus, causing Plaintiff's attorneys to conduct considerable legal research after which the then withdrew its

own motion the next day after both Plaintiff's counsel and Defendants' counsel conducted research and Defendants' counsel determined that its own motion to admit the notes was not supported by existing law;

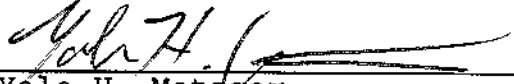
(f) the Defendants spoliation of evidence insofar as two negatives were missing from the roll of film Michael Wisel took at the Shepherd residence;

(g) Agent Birt's testimony in her affidavit filed with the Court that the subject video tape was "unlabeled," and retraction of that testimony in her deposition and at trial.

The Plaintiff seeks an award of \$70,335.00 in fees for her attorney Eugene DeVeaux and \$83,912.50 in fees for her attorney Yale H. Metzger. (See Exhibits A & B, Affidavits of Counsel.)

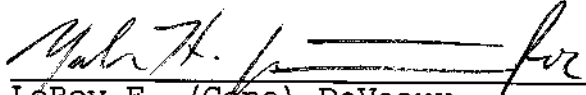
DATED this 9th day of April 2007 at Anchorage, Alaska.

The Law Offices of Yale H. Metzger
Attorney for the Plaintiff



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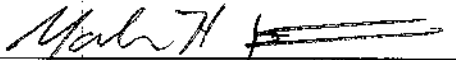
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A true and correct copy of the foregoing was served electronically to the following this 9th day of April 2006:

Susan Lindquist, Esq.
Federal Building & U.S. Courthouse
222 West 7th Avenue, No. 9, Room 253
Anchorage, Alaska 99513-7567



Yale H. Metzger